

CM-4030-C-2023 in/&
RSA-9899-2018 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM-4030-C-2023 in/&
RSA-9899-2018 (O&M)
Date of Decision :29.04.2023

Gurnam Singh

...Appellant

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Vivek Sharma, Advocate for appellants.

Ms. Vibha Tewari, AAG, Haryana.

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Harsimran Singh Sethi, J. (Oral)

CM-4030-C-2023

Present application has been filed for recalling the order dated 13.04.2023 passed by this Court by which, the main appeal was dismissed for non-prosecution.

Keeping in view the averments made in the application, which are duly supported by an affidavit, application is allowed. Order dated 13.04.2023 passed by this Court is recalled and the main appeal is ordered to be restored to its original number and status and is taken up for hearing today itself.

CM-19198-C-2018

The present application has been filed for condonation of delay of 1760 days in re-filing the present appeal.

Keeping in view the averments made in the application, which are duly supported by an affidavit, the application is allowed. Delay of 1760

days in re-filing the present appeal is condoned.

RSA-9899-2018

Present regular second appeal has been filed challenging the judgment and decree dated 07.12.2011 passed by the trial Court by which, the suit filed by the appellant-plaintiff challenging the order of his dismissal from service and subsequent orders passed in appeal and revision, was dismissed as well as judgment and decree dated 06.09.2012 passed by the lower Appellate Court by which, judgment and decree dated 07.12.2011 passed by the trial Court was upheld.

Certain facts need to be noticed for the correct appreciation of the controversy in question.

Appellant-plaintiff joined as constable in the Railways Police department, Haryana on 23.01.1989. While working on the said post, in June, 2005, a charge sheet was served upon the appellant-plaintiff on certain allegations being unauthorized absence from duty and with regard to misbehavior with the superior officer. The charges were enquired into and same were proved by the Enquiry Officer and a show cause notice dated 24.08.2005 was issued to the appellant-plaintiff. Keeping in view the reply to the said show cause notice filed by the appellant-plaintiff, department ultimately passed an order of punishment dated 08.09.2005 dismissing the appellant-plaintiff from service.

Against the said order of dismissal from service, appellant-plaintiff preferred departmental appeal, which was also dismissed on 02.01.2006 thereafter, even the revision filed by the appellant-plaintiff before the Director General of Police was also dismissed on 08.05.2006.

Order of dismissal from service dated 08.09.2005 along with

other subsequent orders passed in appeal as well as revision were challenged by the appellant-plaintiff before the Civil Court by way of filing a civil suit raising grievance that allegations alleged against him were false and he was victim of malafide at the hands of Station House Officer namely Surjeet Singh.

In reply to the suit, respondents pleaded that on various occasions, details of which have been recorded by the trial Court in para-4 of the judgment dated 07.12.2011, appellant-plaintiff remained absent from duty and he was punished for the said absence and even thereafter, when he was asked to report for a duty keeping in view the rally being organized he was marked absent for not performing duty. It was further submitted that the allegations that appellant-plaintiff abused the Station House Officer concerned for which, appellant-plaintiff was proceeded against in the departmental proceedings and was ultimately found guilty of the allegations, due to which he was dismissed from service.

Keeping in view the evidence which came on record, the trial Court came to the conclusion that allegations alleged against the appellant-plaintiff were proved after holding due enquiry in accordance with law and as the Civil Court cannot sit on appeal over the decision in the departmental proceedings, no interference is called for and the suit filed by the appellant-plaintiff was dismissed vide judgment and decree dated 07.12.2011 of trial Court.

Feeling aggrieved against the said judgment and decree of the trial Court, appellant-plaintiff preferred an appeal, which appeal also came to be dismissed on 06.09.20213. Hence, the present regular second appeal.

Learned counsel for the appellant-plaintiff argues that in the

present case, there was no valid justification/evidence before the department to hold the appellant-plaintiff guilty of the allegations and the findings recorded in the enquiry report are perverse.

On being asked as to whether the enquiry report has been challenged, learned counsel for the appellant-plaintiff conceded that same has not been challenged. Once the enquiry report has never been challenged, no grievance can be raised by the appellant-plaintiff at this stage that allegations were wrongly proved by the enquiry officer or the findings of the enquiry officer were perverse.

Learned counsel for the appellant-plaintiff further submits that keeping in view the allegations alleged and the number of years of service already rendered by the appellant-plaintiff, the punishment imposed upon the appellant-plaintiff is totally disproportionate to the charges alleged.

In this regard, it has been proved that the allegations are of insubordination in the disciplined force and such kind of attitude cannot be tolerated. Keeping in view the fact that the appellant-plaintiff misconducted himself and even insulted the superior officer, the said allegations having already proved, a serious view needs to be taken so that an example is set for the others that in a disciplined force such kind of misconduct is not accepted and in case of default, harsh punishment can also be imposed. It cannot be said that insubordination or the absence from duty of a member of disciplined force is to be treated in a causal manner and the said default does not amount to grave misconduct hence, the punishment imposed in the facts and circumstances of the present case cannot be termed as disproportionate to the charges alleged. To support the said finding strength is taken from judgment of the Hon'ble Supreme Court of India in **Civil Appeal No.9997-**

1995 titled as *State of U.P vs. Ashok Kumar Singh* decided on 10.11.1995.

The relevant portion of the judgment is reproduced as under:-

“We are clearly of the opinion that the High Court has exceeded its jurisdiction in modifying the punishment while concurring with the findings of the Tribunal on facts. The High Court failed to bear in mind that the first respondent was a police constable and was serving in a disciplined force demanding strict adherence to the rules and procedures more than any other department. Having noticed the fact that the first respondent has absented himself from duty without leave on several occasions, we are unable to appreciate the High Court's observation that 'his absence from duty would not amount to such a grave charge'. Even otherwise on the facts of this case, there was no justification for the High Court to interfere with the punishment holding that 'the punishment does not commensurate with the gravity of the charge' especially when the High Court concurred with the findings of the Tribunal on facts. No case for interference with the punishment is made out.

Further, learned counsel for the appellant-plaintiff submits that appellant-plaintiff already had 10 years of service to his credit hence, punishment of compulsory retirement would have been appropriate punishment rather than punishment of dismissing him from service.

This argument is fallacious. An employer is the best authority to see whether keeping in view the allegations alleged, which are of insubordination and absence from duty in the present case, appellant-plaintiff is liable to be retained in service or not. Courts cannot interfere into the punishment imposed unless and until the same is too shocking to the mind of the Court to be disproportionate keeping in view the charges alleged.

In the present case, keeping in view the allegations alleged, it cannot be said that punishment imposed is disproportionate to the charges alleged against the appellant-plaintiff.

As far as the claim of the appellant-plaintiff that he should have

been compulsorily retired as he had more than 10 years of service to his credit, the same also cannot be accepted.

It may be noticed that an honest employee who works in accordance with law for a period of more than of 10 years but due to certain circumstances is not able to continue in service and had to resign despite having more than 10 years of service, no benefit of the past service is granted. Once, an employee who resigned after rendering 10 years of service is not entitled for the grant of benefit of compulsory retirement, no such benefit can be given to an employee, who was found guilty of the misconduct and was dismissed from service. An employee having 10 years of service but dismissed from service due to grave misconduct cannot claim to be better placed than an honest employee, who had to resign from service after having more than 10 years of service hence, the argument raised is rejected.

Keeping in view the facts and circumstances noticed hereinbefore, the findings recorded by the Courts below are perfectly valid and is correct appreciation of the evidence and facts on record, hence no interference is called for by this Court and the present regular second appeal is accordingly dismissed.

April 29, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No